BILL NO. S-90-04-10

SPECIAL ORDINANCE NO. S-91-90

AN ORDINANCE approving Contract FOR RES. #6145-90, ARCHER AVENUE, CURBS, WALKS, PARTIAL DRIVES, & DRAINAGE between TOMCO CONSTRUCTION CO., and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract **FOR RES. #6145-90, ARCHER AVENUE, CURBS, WALKS, PARTIAL DRIVES, & DRAINAGE** by and between **TOMCO CONSTRUCTION CO.**, and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, is hereby ratified, and affirmed and approved in all respects, respectfully for:

curbs, sidewalks, partial drives and drainage on Archer Avenue from the west property line of Sherman Blvd. to the west property line of Oakland Street;

involving a total cost of Twenty-Two Thousand Nine Hundred Forty-Four and 30/100 Dollars ($22,944.30).

SECTION 2. Prior Approval has been requested from Common Council on March 27, 1990. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Clayton R Edmonds
Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

CONTRACT NO. 6145-90

ARCHER AVENUE

BOARD ORDER NO. 116-87 WORK ORDER NO. 10,808

THIS CONTRACT made and entered into in triplicate this 4th day of April, 1990, by and between TOMCO CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

RES. NO. 6145-90 ARCHER AVENUE

To improve Archer Avenue from the west property line of Sherman Blvd. to west property line of Oakland Street by replacing curb, sidewalks, partial drives and drainage.

all according to RES. NO. 6145-90, Drawing No. _____, Sheets _____, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of $ 22,944.30. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department

of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-

tion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Contract No. 6145-90.
b. Instructions to Bidders for Contract No. 6145-90.
c. Contractor's Proposal Dated 3/14/90.
d. Ft. Wayne Engr. Dept. Drawing #_____.
e. Supplemental Specifications for Contract No. 6145-90.
f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
h. Prevailing Wage Scale.
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Minority/Female Employment Hourly Utilization.
l. Right-of-Way Cut Permit.
m. Comprehensive Liability Insurance Coverage.
n. MBE/WBE Committment Form.
o. _____
p. _____

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insuror acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 6/30/90 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR)

BY: [signature]

_____, V President

BY: Judy Fishering [signature]

_____, Secretary

CITY OF FORT WAYNE, INDIANA

BY: E. Sharon Banks
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS & SAFETY

Chief of Staff

Charles E. Layton
Director of Public Works

Michael McAlexander
Director of Public Safety

Douglas M. Lehman
Director of Administration & Finance

ATTEST:

Helen V. Gochenour
Helen V. Gochenour, Clerk

Continental Insurance℠

Bond No. 371 13 91

PERFORMANCE BOND

Approved by The American Institute of Architects
A.I.A. Document No. A-311 (Feb. 1970 Edition)

KNOW ALL MEN BY THESE PRESENTS:

That TOMCO CONSTRUCTION COMPANY, INC.
(Here insert full name and address or legal title of the Contractor)

as Principal, hereinafter called Contractor, and The Continental Insurance Company as Surety,
(Here insert full name and address or legal title of Surety)

hereinafter called Surety, are held and firmly bound unto City of Fort Wayne
(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, in the amount of Twenty-two thousand nine hundred fourty-four and 30/100 ----- Dollars ($ 22,944.30----------),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated March 21, 1990
entered into a contract with Owner for Resolution #6145-90; Archer Avenue

in accordance with drawings and specifications prepared by
(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2)Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this 27th day of March A.D. 19 90

TOMCO CONSTRUCTION COMPANY, INC. (Seal)
(Principal)

(Witness) (Title)

YASTE, ZENT & RYE AGENCY, INC. The Continental Insurance Company (Seal)
(Surety)

(Witness) (Title) Attorney-in-Fact

BOND 4393C

Bond No. 371 13 91

LABOR AND MATERIAL PAYMENT BOND

Approved by The American Institute of Architects
A.I.A. Document No. A-311 (Feb. 1970 Edition)

Note: This bond is issued simultaneously with another bond in favor of the owner conditioned for the full and faithful performance of the contract

KNOW ALL MEN BY THESE PRESENTS:

That TOMCO CONSTRUCTION COMPANY, INC.
(Here insert full name and address or legal title of the Contractor)

as Principal, hereinafter called Principal, and The Continental Insurance Company as Surety,
(Here insert full name and address or legal title of Surety)

hereinafter called Surety, are held and firmly bound unto City of Fort Wayne
(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of Twenty Two thousand nine hundred fourty-four and 30/100 -------- Dollars ($ 22,944.30),
(Here insert a sum equal to at least one-half of the contract price)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated March 21, 1990 entered into a contract with Owner for Resolution #6145-90; Archer Avenue

in accordance with drawings and specifications prepared by _____
(Here insert full name, title and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed, the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which the legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 27th day of March A.D. 19 90

TOMCO CONSTRUCTION COMPANY, INC. (Seal)
(Principal)

Paul M Newell
(Witness)

(Title)

YASTE, ZENT & RYE AGENCY, INC. The Continental Insurance Company (Seal)
(Surety)

Mary A. MacKay
(Witness)

(Title) Attorney-in-Fact

The Continental Insurance Company

180 Maiden Lane, New York, New York 10038

GENERAL POWER OF ATTORNEY

Know all men by these Presents, That THE CONTINENTAL INSURANCE COMPANY has made, constituted and appointed, and by these presents does make, constitute and appoint

Donald T. Belbutowski of Fort Wayne, Indiana

its true and lawful attorney, for it and in its name, place, and stead to execute on behalf of the said Company, as surety, bonds, undertakings and contracts of suretyship to be given to

All Obligees

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

Five Million ($5,000,000) Dollars.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company on the 1st day of November, 1977:

"RESOLVED, that the Chairman of the Board, the Vice Chairman of the Board, the President, an Executive Vice President or a Senior Vice President or a Vice President of the Company, be, and that each or any of them is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of the Company, bonds, undertakings and all contracts of suretyship, and that an Assistant Vice President, a Secretary or an Assistant Secretary be, and that each or any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company.

FURTHER RESOLVED, that the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached."

In Witness Whereof, THE CONTINENTAL INSURANCE COMPANY has caused its official seal to be hereunto affixed, and these presents to be signed by one of its Vice Presidents and attested by one of its Assistant Vice Presidents this 4th day of June, 1984.

THE CONTINENTAL INSURANCE COMPANY

Attest:

By Michael J. Beernaert

T.H. Stephens, Assistant Vice President

Michael J. Beernaert, Vice-President

STATE OF NEW JERSEY }
COUNTY OF MIDDLESEX } ss.:

On this 4th day of June, 1984, before me personally came Michael J. Beernaert, to me known, who being by me duly sworn, did depose and say that he is a Vice President of THE CONTINENTAL INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Marilyn A. Hockenbury
A Notary Public of New Jersey
My Commission Expires June 23, 1988

CERTIFICATE

I, the undersigned, an Assistant Vice President of THE CONTINENTAL INSURANCE COMPANY, a New Hampshire corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and sealed at Piscataway, in the State of New Jersey. Dated the 27th day of March ,1990 .

James M. Keane

James M. Keane, Assistant Vice President

Read the first time in full and on motion by Gia Quinta, seconded by Talarico, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock _____ .M.,E.S.T.

DATED: 4-10-90

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Gia Quinta, seconded by Talarico, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	9			
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GiaQUINTA	✓			
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 4-24-90

Nadejda Eshcoff
~~SANDRA E. KENNEDY, CITY CLERK~~ Deputy

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ (SPECIAL) ~~(ZONING MAP)~~ ORDINANCE ~~RESOLUTION~~ NO. S-91-90 on the 24th day of April, 1990,

ATTEST

Nadejda Eshcoff
~~SANDRA E. KENNEDY, CITY CLERK~~ Deputy

SEAL

Charles B. Redd
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th day of April, 1990, at the hour of 11:30 o'clock A. .M.,E.S.T.

Nadejda Eshcoff
~~SANDRA E. KENNEDY, CITY CLERK~~ Deputy

Approved and signed by me this 26th day of April, 1990, at the hour of 6:50 o'clock P .M.,E.S.T.

P. Helmke
PAUL HELMKE, MAYOR

Admn. Appr. _____

TITLE OF ORDINANCE ~~Contract for Res. 6145-90, Archer Avenue~~

DEPARTMENT REQUESTING ORDINANCE Board of Public Works & Safety

SYNOPSIS OF ORDINANCE The contract for Res. 6145-90 is for curbs, sidewalks, partial drives and drainage on Archer AVenue from the west property line of Sherman Blvd. to the west property line of Oakland Street. Tomco Construction Co., is the contractor. Prior approval received on 3/27/90.

S-90-04-10

EFFECT OF PASSAGE ~~Improved conditions at above location.~~

EFFECT OF NON-PASSAGE _____

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) ~~$22,944.30~~

ASSIGNED TO COMMITTEE _____

BILL NO. S-90-04-10

REPORT OF THE COMMITTEE ON PUBLIC WORKS

MARK E. GiaQUINTA, CHAIRMAN
CLETUS R. EDMONDS, VICE CHAIRMAN
HENRY, SCHMIDT, TALARICO

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ approving Contract FOR RES. #6145-90, ARCHER AVENUE, CURBS, WALKS, PARTIAL DRIVES, & DRAINGAGE between TOMCO CONSTRUCTION CO., and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) ~~(RESOLUTION)~~

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Mark E. GiaQuinta			
Samuel J. Talarico			
Thomas C. Henry			

DATED: 4-24-90

Sandra E. Kennedy
City Clerk